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IN THE
Supreme Court of the United States

OCTOBER TERM, 1948

No. 176

GEORGE G. REINING

v.

THE UNITED STATES OF AMERICA

**MOTION TO AMEND THE ORIGINAL PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF.**

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ALEX W. SWORDS,
Counsel for Petitioner.

ROBERT S. LINK, JR.,
Of Counsel.

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE
UNITED STATES AND ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES:

The petitioner, George G. Reining, respectfully prays that the motion to amend the original petition for a writ of certiorari, filed herein on July 26, 1948 (R. 283), which petition sets forth therein all of the essential facts, lists the opinion of the Court below and the jurisdiction of this Honorable Court, be granted and that this Court consider the additional legal reasons why the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered April 20, 1948, be set aside and the verdict and sentence of the District Court be vacated.

MOTION TO AMEND ORIGINAL PETITION

Comes now, George G. Reining, the petitioner and most respectfully moves this Honorable Court to allow him to file an amendment to his original petition for a writ of certiorari and to present further and additional grounds for the granting of the writ and for reasons say:

That in the original petition the attorneys for the petitioner failed to include therein very vital Constitutional questions and thereby the rights of the petitioner will be greatly effected unless he is permitted to amend the original petition filed herein.

QUESTIONS PRESENTED BY AMENDMENTS

1. Is it not reversible error to compel the accused, petitioner, to be a witness against himself, contrary to the Fifth Amendment to the Constitution?

Fifth Amendment. "No person * * * shall be compelled in any criminal case to be a witness against himself."

2. Is it not reversible error to convict the accused by witnesses who are not produced in court and not confronted by the accused and the accused not given the right to cross-examine?

Sixth Amendment. "In all criminal prosecutions, the accused shall * * * be confronted with the witnesses against him * * *."

STATEMENT OF FACTS FROM RECORD

After the prosecution had closed its case the prosecutor learned that the defendant, the petitioner herein, was not going to take the stand and testify and that the defense was closing its case without offering any testimony and moving for a directed verdict, he, the prosecutor, moved

the Court for permission to reopen the Government's case and present additional testimony, which motion, over the objections of the defendant, was granted and the prosecution realizing that there was no evidence to connect the defendant, petitioner herein, with using the mails, offered in evidence the criminal appearance bond which the defendant had been forced to sign in Connecticut for his appearance in Florida. Proper objections were made by defendant's attorneys.

This bond was taken before a United States Commissioner in the State of Connecticut and allegedly signed by the defendant and the prosecution offered same in evidence so that the jurors could compare the signature on the bond with the signature of the only letter allegedly signed by the defendant (R. 210).

The prosecution failed to have or produce the United States Commissioner, the only person who could testify as to the defendant's signature on this bond, as a witness and the prosecutor had the Assistant Clerk of the District Court in Florida testify that the said bond was among the papers in the case. He made no effort to qualify the clerk as a hand-writing expert and the clerk had never seen the defendant write nor did not know his signature, but could only testify that said bond was forwarded to Florida by some person, assumed of course, to be the United States Commissioner in Connecticut.

ARGUMENT

As quoted above the Constitution prohibits the forcing of an accused to be made a witness against himself in a criminal case and when the United States forces a man to sign a criminal bond it cannot use that bond against him as was done in this case and even if the Government was permitted to so use this bond to prove the signature and com-

pare same with a letter in evidence, the accused had the Constitutional right to be confronted by the witness who witnessed the alleged signing of the bond, or to have some hand-writing expert or some person familiar with the hand-writing of the accused testify so that he, the accused, would have his Constitutional right to cross examine such witness, but surely the rule of evidence applicable in civil cases could not apply in a criminal case without violating the Sixth Amendment to the Constitution.

Petitioner respectfully says that three of the rights guaranteed to him by the Constitution were violated by the Court below. First as set forth in original petition the prosecutor told the jury that the defendant had not denied that he wrote the letter he offered in evidence, thereby calling attention to the jury that the defendant had not taken the stand in his defense, for while the Government attempts to hold that the prosecutor's remarks were addressed to the attorneys for the defendant, he, and this Honorable Court know that the defendant was the *only person who could possibly deny the signature on that letter* and the prosecutor looked directly at the defendant and without question meant to and did in fact say to the Jury:

"The defendant does not deny writing this letter."

There could be no other interpretation of prosecutor's statement.

Secondly, the prosecution knew that the defendant had been forced to sign the bond in question by the United States Government and to use same in a criminal case against him is unquestionably a violation of his Constitutional rights.

Thirdly, even if the Government had the right to offer said bond in evidence it was necessary to have the witness,

the United States Commissioner, present to confront the defendant and give the defendant the opportunity to cross examine this material witness and here we have a man admittedly convicted on the testimony of, at least one witness, who was not confronted by the defendant. There could be many theories as to who signed this bond and there was but one proper witness and the Government failed to produce this witness and without this witness there was absolutely no evidence before the Court of any using of the mails.

CONCLUSION

It is of a far greater importance to protect the Constitutional rights of the people than it is to convict, even the guilty. Governments crumble and fall by inroads on the people's rights and it is better to stop "in limine" these inroads on the jewel of our Government. The Constitution, than uphold a questionable judgment.

For the reasons presented in the original petition and those presented herein it is respectfully submitted that the petition for a Writ of Certiorari should be granted.

ALEX W. SWORDS,

Counsel for Petitioner.

ROBERT S. LINK, JR.,

Of Counsel.